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DIVISION II

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STATE OF WASHINGTON

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No. 436876-II

**COURT OF APPEALS, DIVISION II BY
OF THE STATE OF WASHINGTON**

In re the Matter of:

DAGMAR Q. KNIGHT,

A Vulnerable Adult (Protected Person)/Appellant,

TOR K. KNIGHT, Appellant,

v.

ERIC KNIGHT, Respondent.

RESPONDENT'S AMENDED OPENING BRIEF

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I. IDENTITY OF RESPONDING PARTY

Comes now, ROBIN H. BALSAM and MARGARET M. KENNEDY of ROBIN H. BALSAM, P.S., attorneys for C. Eric Knight, and submit this Response to Appellant's opening brief, filed December 20, 2012.

II. STATEMENT OF RELIEF SOUGHT

Eric Knight (hereinafter Eric¹) respectfully requests that the Court uphold the Pierce County Superior Court Judge's ruling that Dagmar Knight is a vulnerable adult in need of protection from abuse, neglect, and financial exploitation by her son, Tor Knight.

III. RESTATEMENT OF RELEVANT FACTS

A. RESTATEMENT OF SUBSTANTIVE FACTS

Dagmar Knight (hereinafter Mrs. Knight) is an 81 year old vulnerable adult who has been diagnosed with dementia and receives in-home caregiving assistance from a live-in caregiver. CP at 10; CP at 26; CP at 363; VRP1² at 22; VRP2³ at 16. Mrs. Knight executed a power of attorney in May 2007 appointing her son, Eric, as her attorney-in-fact. CP

¹ Because the parties all share a last name, first names are used for the Knight brothers. No disrespect is intended.

² VRP1 refers to the March 8, 2012 Verbatim Report of Proceedings.

³ VRP2 refers to the June 15, 2012 Verbatim Report of Proceedings.

at 73. The durable power of attorney became effective at the time Mrs. Knight's husband died. CP at 114; 233.

Mrs. Knight was widowed in May 2010. CP at 12. She resides in her own home on a large property in Lakebay, WA, that also has several other homes on it. CP at 73. Most of Mrs. Knight's assets other than social security and pension payments are held in trust and are managed by a professional trustee on behalf of Mrs. Knight. CP at 72-3; 233. Mrs. Knight argues on one hand that Eric is attempting to gain total control of her assets and income, but on the other hand points out that her husband's will protects her financially by the appointment of a professional trustee. Appellant's Opening Brief at 1, 16. There is no evidence in the record to support the assertion that Eric is attempting to gain control of all of Mrs. Knight's real property, income, or other assets.

Mrs. Knight's adult son, Tor Knight (hereinafter Tor), who is a schizophrenic convicted felon, resides in one of the other homes on the property. CP at 29; CP at 73. Although Mrs. Knight's opening brief states that Tor is disabled and has cognitive challenges, these statements are not supported by the record. Appellant's Opening Brief at 2. There is evidence in the record that Tor is schizophrenic and receives some type of disability benefits, but the nature of the benefits is not clear and there is no

evidence about how his mental illness impacts his cognitive functioning, if at all. CP at 29, 73.

In addition to his disability income, Tor was receiving a monthly allowance of \$1,000 from Mrs. Knight. He resided rent-free in the home that had been built for him on the Lillegaard property, and Mrs. Knight provided him with a car to use. CP at 28, 73, 274-5. Mrs. Knight paid all of Tor's utilities, including his telephone, provided him with a vehicle, paid his car insurance, and paid large amounts of money to Tor's psychiatrist. CP at 274-5. In spite of this financial support, Tor took more than \$56,000 in additional monies from Mrs. Knight's bank accounts in a period of approximately nine months. CP at 28, 274, 200-221.

Tor has significant criminal history. As of the date of filing of the petition for a vulnerable adult protection order, Tor's criminal convictions included the following: 1) three counts of Assault in the Fourth Degree; 2) Unlawful Possession of a Firearm, Unlawful Possession of a Controlled Substance; 3) two counts of Assault in the Second Degree, one count of Assault in the Third Degree; 4) two counts of Assault in the Third Degree, one count of Bail Jumping, one count of Obstructing a Law Enforcement Officer; and 5) Attempting to Elude a Law Enforcement Officer, Assault

in the Fourth Degree, Unlawful Possession of a Controlled Substance. CP at 29.⁴

On February 23, 2012, Eric filed a petition for a vulnerable adult protection order, as well as a petition for the appointment of a guardian for Mrs. Knight. CP at 26-41; VRP1 at 8. In declarations submitted to the court on February 23, 2012, Eric alleged that Tor had financially exploited Mrs. Knight by repeatedly pressuring her to give him money and by spending more than \$56,000 of his mother's money for his personal purchases in the span of approximately nine months. CP at 89-90; 93; 200-221. Eric alleged that Tor was unduly influencing Mrs. Knight for the purpose of obtaining money from her above and beyond what was being given to him on a monthly basis out of Mrs. Knight's income. CP at 89-90; 200-221; 274-5.

Additionally, Eric alleged that Tor's behaviors towards Mrs. Knight and her close friends and family members socially isolated Mrs. Knight, constituting mental abuse. CP at 48-49; 56; 64; 68; 76; 89; 92; 100-101. Eric further alleged that Tor had neglected Mrs. Knight when he prematurely removed her from a facility after surgery in the spring of 2011

⁴ Although Mrs. Knight's opening brief asserts that Eric has had "run ins with the law," and that he has had "similar problems" to Tor with the criminal justice system and incarceration, there is nothing in the record to support this, and it is not accurate. Eric has been in Alcoholics Anonymous and sober for six years. He has not been "in and out of the criminal justice system." Appellant's Opening Brief at 2, 3; CP at 62.

and took her home with no one to provide care for her, no food in the house, and no way to get assistance. CP 54-56; 74. During this same time period, Tor took his mother's pain medications that had been prescribed for recovery from her recent surgery and told others that he had thrown them out because he did not believe that his mother needed them. CP at 49; 55-56.

On March 1, 2012, Eric filed a psychological examination of Mrs. Knight that had been conducted on February 19, 2012. CP at 10-21. The psychologist concluded that Mrs. Knight is suffering from dementia that causes "mild memory impairment, occasional confusion, cognitive inflexibility, difficulty with problem solving, and impaired judgment." CP at 11. The psychologist went on to state that,

In consideration of her impaired memory functions, impaired executive functioning including poor understanding of complex information and poor problem solving, and her poor appreciation of situational difficulties with her son Tor, it is quite apparent that she is **vulnerable to undue influence, financial exploitation, and neglect**. In light of Tor's reported history of violence, she may well also be at risk of being personally harmed.

CP at 17 (emphasis contained in original).

As of February 19, 2012, the date that Mrs. Knight participated in a psychological evaluation, she did not have plans to change either her will or her designation of her son, Eric, as her attorney-in-fact. CP at 17. The day after Eric filed the petition for the appointment of a guardian and

the petition for a protection order, Tor took Mrs. Knight to an attorney to attempt to revoke the power of attorney naming Eric. CP at 128; 232. However, because the guardianship petition had been filed the day before, Mrs. Knight's attempted revocation was not successful. RCW 11.88.045(5) provides that:

Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

In support of his petition for a protection order on behalf of his mother, Eric submitted eight declarations evidencing financial exploitation, abuse, and neglect. CP at 42-83; 88-103. In response, Tor submitted two declarations from people who had not been present for any of the alleged incidents, but who generally asserted that they had not observed concerning behaviors between Tor and his mother. CP at 115-22. Tor did not respond to the factual allegations raised in the petition. CP at 115-22; VRP2 at 15. Mrs. Knight also did not dispute the factual allegations raised by Eric but rather asserted that she did not want the protection order and that she had concerns about why Eric was petitioning for the protections. CP at 113-114.

B. STATEMENT OF PROCEDURAL FACTS

On March 8, 2012, a superior court commissioner conducted a hearing on the protection order petition. VRP1. Neither Tor nor Mrs. Knight requested an evidentiary hearing on the allegations, and neither testified at the hearing. *Id.* Additionally, Mrs. Knight did not request an evidentiary hearing on the issue of undue influence or incapacity as provided for in RCW 74.34.135(2). *Id.* The superior court commissioner dismissed the petition, ruling that the petitioner had not met his burden of proof and that orders should be entered in the guardianship matter rather than in a separate cause of action. VRP1 at 48-50; 56.⁵

At the hearing on the petition for a protection order, the court commissioner also expressed concern that Eric had changed his mother's telephone number. VRP1 at 47. However, as Eric explained in a declaration filed with the court on March 7, 2012, this action was taken because, while the temporary protection order was in effect, Tor had numerous people, including friends of his who are felons, calling Mrs. Knight to discuss the issues that he was not permitted to discuss with her pursuant to the temporary protection order, either personally or through third parties. VRP1 at 47-8; CP at 274. Mrs. Knight still had a working

⁵ Although Tor and Mrs. Knight argued that protections in the guardianship matter would be sufficient protection, Tor went on to take the position that the trial court did not have jurisdiction to order restraints against him in the guardianship proceeding because he had not appeared in the guardianship matter. CP at 388.

home telephone, and in addition, Mrs. Knight's caregiver had a cell phone.

Id.

On March 19, 2012, Eric filed a motion to revise the March 8, 2012, commissioner's ruling. CP at 318-322. The motion to revise was not heard until June 15, 2012, due to several factors. These included that Tor and Mrs. Knight were ill, there were scheduling issues with counsel and the court, and the parties were engaged in settlement negotiations to try to resolve all issues raised in both the protection order and the guardianship. CP at 345-356. Neither Tor nor Mrs. Knight appeared for the hearing on the motion to revise. *See* VRP2.

At the June 15, 2012, hearing, the court issued a ruling revising the court commissioner's order and entering a Vulnerable Adult Protection order against Tor⁶. CP at 363-366; 377-378. Neither Mrs. Knight nor Tor appeared for the hearing and neither requested an evidentiary hearing. VRP2 at 5; *See* VRP2.

Eric did not request that the court enter an order prohibiting all contact between Mrs. Knight and Tor, as asserted by Mrs. Knight in her opening brief. Appellant's Opening Brief at 6; VRP2 at 21. Instead, Eric requested that Tor be prohibited from having any unsupervised contact

⁶ There is no evidence in the record to support Mrs. Knight's contention in her opening brief that Tor was living in his car as a result of the entry of the protection order. Appellant's Opening Brief at 25.

with his mother. VRP2 at 21. An agreed order authorizing supervised visitation was entered on June 25, 2012. CP at 393-395.

The court specifically found that Tor had financially exploited his mother, had socially isolated her, and was unduly influencing her. VRP2 at 60-61. The court then recessed so the parties could discuss the order. VRP2 at 63. When the matter went back on the record, the court was informed by Tor's psychiatrist that he believed Tor would be suicidal as a result of the order and that he would need to be admitted for in-patient psychiatric care. VRP2 at 64; 73-74. Counsel for both Tor and Mrs. Knight argued that for this reason the order should not be entered. VRP2 at 64. Tor's attorney also argued that Mrs. Knight's trust should provide \$20,000 to cover the costs of Tor residing elsewhere and the costs of his psychiatric treatment. *Id.* Finally, he argued that the order should not be entered for a one week time period for the purpose of allowing Tor to adjust to the idea that an order had been entered. *Id.* Judge Buckner declined to delay entry of the order and declined to order \$20,000 of trust money to go towards Tor's housing and emergency psychiatric needs. VRP2 at 65; 74-75; CP at 363-366. On June 25, 2012, Mrs. Knight and Tor filed Motions for Reconsideration of Judge Buckner's June 15, 2012, ruling. CP at 379; 387-392. Once again, the hearing was delayed due to scheduling issues. CP at 404-408. The motions for reconsideration were

denied by Judge Buckner on August 3, 2012, and this timely appeal follows.

IV. ARGUMENT

A. THE APPELLATE COURT REVIEWS ENTRY OF A PROTECTION ORDER FOR AN ABUSE OF DISCRETION.

An appellate court reviews a superior court's decision to grant or deny a protection order for an abuse of discretion. *Hecker v. Cortinas*, 110 Wn. App. 865, 869, 43 P.3d 50 (2002). A trial court abuses its discretion if it makes a decision that is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons. *State ex Rel. Carrol v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

Findings of fact made by the superior court are reviewed for substantial evidence. *Scott v. Trans-Sys., Inc.*, 148 Wn.2d 701, 707-708, 64 P.3d 1 (2003). Substantial evidence is evidence that is sufficient to persuade a fair-minded, rational person of the truth of the declared premise. *In re Snyder*, 85 Wn.2d 182, 185-86, 532 P.2d 278 (1975).

The appellate court does not substitute its judgment for that of the trial court and defers to the trier of fact regarding witness credibility determinations, persuasiveness of the evidence, and conflicting testimony. *Seattle-First Nat'l Bank v. Brommers*, 89 Wn.2d 190, 199, 570 P.2d 1035 (1977); *Morse v. Antonellis*, 149 Wn.2d 572, 574, 70 P.3d 125 (2003).

With respect to questions of law raised by the entry or denial of a protection order, the appellate court applies the de novo standard of review. *In re Marriage of Suggs*, 152 Wn.2d 74, 79, 93 P.3d 161 (2004).

Mrs. Knight cites *In re Marriage of R.E.*, 144 Wn. App. 393, 183 P.3d 339 (2008) and *In re Marriage of Dodd*, 120 Wn. App. 638, 86 P.3d 801 (2004) for the proposition that the correct standard of review for all issues is de novo. However, both cases cited by Mrs. Knight address the standard of review the superior court judge must apply in considering motion to revise rulings by court commissioners rather than the standard of review applied by the Court of Appeals. *In re Marriage of R.E.* at 405-406; *In re Marriage of Dodd* at 644.

B. THE TRIAL COURT PROCEEDINGS ADEQUATELY
PROTECTED THE DUE PROCESS RIGHTS OF BOTH
MRS. KNIGHT AND TOR.

Mrs. Knight argues that her due process rights were violated because the trial court did not have sufficient evidence on which to base findings by clear, cogent, and convincing evidence that Mrs. Knight is a vulnerable adult and that Eric is entitled to file the petition on his mother's behalf. However, due process requires the heightened civil standard of clear, cogent, and convincing evidence only in certain circumstances.

Those circumstances include administrative hearings for revocation of child care and physician licenses due to abuse, neglect,

financial exploitation, or abandonment of a vulnerable adult. Mrs. Knight cites to two such cases, *Hardee v. DSHS*, 172 Wn.2d 1, 256 P.3d 339 (2011) and *Nguyen v. DOH*, 144 Wn.2d 516, 29 P.3d 689 (2009), and argues that they are analogous to Mrs. Knight's situation. However, the cases cited by Mrs. Knight concern revocations of professional licenses, which by their nature invoke different due process considerations than the instant case, which involves no licensing issues.

In *Kraft v. DSHS*, 145 Wn. App. 708, 716, 187 P.3d 798 (2008), the court held that due process requires findings by a preponderance of the evidence in administrative hearings concerning findings by Adult Protective Services that an individual has abused, neglected, financially exploited, or abandoned a vulnerable adult. This is true even though the individual's name is placed on a registry that prevents the individual from contracting with DSHS for certain types of jobs involving unsupervised access to children, elderly, or disabled clients. RCW 74.39A.051. A trial court's findings in a petition for a vulnerable adult protection order are more akin to the findings addressed in *Kraft* than those in cases concerning revocation of a professional license. There is no legal authority for extending the clear, cogent, and convincing standard to vulnerable adult protection order matters.

Mrs. Knight and Tor provide no legal authority to support their position that the constitutional protections afforded to interference with the parent/child relationship apply to the relationship between a parent and an adult disabled child. RCW 4.20.060, the statute referred to in Mrs. Knight's opening brief, provides that a personal injury cause of action resulting in death survives if there are certain surviving heirs, including a child who is dependent on the deceased parent. *Armantrout v. Carlson*, 166 Wn.2d 931, 214 P.3d 914 (2009), is also cited by Mrs. Knight in support of this position. However, *Armantrout* addressed the application of RCW 4.20.020 to parents who are dependent on their adult child for support and the parents' legal authority to file a personal injury claim for damages arising from the death of their adult child. *Id.* at 935-6. The case and statute cited by Mrs. Knight simply are not applicable or analogous to the instant case.

Mrs. Knight next argues that due process requires the use of the clear, cogent, and convincing evidence standard because the order entered restricts her right to spend her money on Tor. Appellant's Opening Brief at 11. However, the restraints issued in the vulnerable adult protection order are against Tor, not against Mrs. Knight. CP at 364-365. Tor was ordered by the court to provide an accounting of the disposition of Mrs. Knight's income or other resources so that the parties could determine

how much of his mother's money he had spent. CP at 364. This is not a restraint on Mrs. Knight and there is no basis for invoking the clear, cogent, and convincing standard.

Similarly, this matter has not impacted Mrs. Knight's ability to use her home. The order provides that Tor may not be on his mother's property, but this is a restriction against Tor, who does not own the property and has no legal right to the property until his mother passes away. CP at 133, 154, 364.

"[N]aked castings into the constitutional sea are not sufficient to command judicial consideration and discussion." *In re Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986) (citing *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970)). There is no legal authority to support Mrs. Knight's argument that due process requires a heightened burden of proof in vulnerable adult protection order matters that restrain the respondent in the action in various ways but do not restrain the vulnerable adult. The proper burden of proof in these matters is preponderance of the evidence.

C. SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING THAT MRS. KNIGHT IS A VULNERABLE ADULT.

Mrs. Knight, for the first time on appeal, argues that she is not a vulnerable adult. The trial court properly found that Mrs. Knight is a

vulnerable adult as defined in the vulnerable adult protection statutes. The definition of a vulnerable adult includes a person who is “sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself.” RCW 74.34.020(16)(a).

There is sufficient evidence in the record to support the trial court’s finding that Mrs. Knight is a vulnerable adult because she is over the age of 60 and has the functional, mental, or physical inability to care for herself. Mrs. Knight is 81 years old and receives in-home caregiving assistance from a live-in caregiver. CP at 274; 283; 325. She is physically frail and has been diagnosed with dementia. CP at 10; 79. As a result of the dementia, Mrs. Knight suffers from impaired memory and judgment and becomes confused and disoriented at times. CP at 11. Further, both Tor and Mrs. Knight argued at the trial court level that Mrs. Knight is dependent on Tor for various tasks, including transportation, help around the property, and obtaining appropriate medical treatment. CP at 115, 118, 389, 399.

In addition, Mrs. Knight is a vulnerable adult pursuant to RCW 74.34.020(17)(g) because she self-directs her own care and receives services from a personal aide. The statute refers to RCW 74.39, which governs personal aides in the home. RCW 74.39.007(2) defines a personal aide as:

An individual, working privately or as an individual provider under contract or agreement with the department of social and health services, who acts at the direction of an adult person with a functional disability living in his or her own home and provides that person with health care services that a person without a functional disability can perform.

In the instant case, Mrs. Knight has a live-in caregiver who assists her. VRP1 at 22; VRP2 at 16. Pursuant to the relevant statutes, personal aides are exempt from any requirement to qualify and be credentialed as health care providers by the Department of Health pursuant to Title 18 RCW. RCW 74.39.070. There is no distinction made in the statute between personal aides under contract with DSHS and personal aides who are privately paid. *Id.*

The trial court judge's finding that Mrs. Knight is a vulnerable adult is supported by substantial evidence under either statutory definition.

D. SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING THAT ERIC KNIGHT IS ENTITLED TO BRING A VULNERABLE ADULT PROTECTION ORDER ON HIS MOTHER'S BEHALF.

RCW 74.34.210 provides that a petition for a vulnerable adult protection order "may be brought by the vulnerable adult, the vulnerable adult's guardian or legal fiduciary, the department, or any interested person as defined in RCW 74.34.020." An interested person is defined as a person who is interested in the welfare of the vulnerable adult, has a good faith belief that the court's intervention is necessary, and provides

appropriate evidence that the vulnerable adult is unable, due to incapacity, undue influence, or duress to protect his or her own interests. RCW 74.34.020(10).

In 2007 Mrs. Knight executed a power of attorney naming her son, Eric, as her attorney-in-fact. CP at 73; 128. An attorney-in-fact acting pursuant to a duly executed power of attorney is a legal fiduciary for the person executing the power of attorney. *In re Estates of Palmer*, 145 Wn. App. 249, 263; 187 P.3d 758 (2008). An attorney-in-fact “becomes a fiduciary who is bound to act with the utmost good faith and loyalty.” *Id.* RCW 74.34.210 clearly contemplates legal fiduciaries other than guardians, and an attorney-in-fact meets this definition.

In addition, Eric is an interested person as defined in RCW 74.34.020. As Mrs. Knight’s son, he is interested in his mother’s welfare. He acted in good faith, as evidenced by the numerous concerns brought forth by a variety of close friends and family members of his mother’s, as well as his own observations. And, he provided appropriate evidence to the court that his mother was being financially exploited, abused, and/or neglected.

In a recent Court of Appeals decision, *Goldsmith v. DSHS*, 169 Wn. App. 573, 584-5, 280 P.3d 1173 (2012), the Court held that pressuring a vulnerable adult about finances and yelling at the vulnerable

adult to the point that the vulnerable adult was visibly upset constituted mental abuse. In the instant case, Tor has been pressuring his mother about finances to such an extent that Mrs. Knight spent more than \$56,000 for Tor's personal expenditures in a 9 month period without having any ability to understand how this would affect her own financial situation. CP at 89-90; 200-221; 274-5. In addition, Tor has threatened Mrs. Knight's friends and family members so many times that Mrs. Knight is unable to see many of the people she historically has had in her life. CP at 48-49; 56; 64; 68; 76; 89; 92; 100-101. He has neglected his mother, and he stole her pain medications after she had undergone surgery. CP at 54-56; 74. Given that Mrs. Knight has been diagnosed with dementia and is particularly vulnerable to exploitation and neglect, the trial court properly found that Tor had abused, neglected, and/or financially exploited his mother.

E. THE TRIAL COURT PROPERLY ENTERED A FIVE YEAR PROTECTION ORDER AND WAS NOT REQUIRED TO IMPOSE THE LEAST RESTRICTIVE ORDER NECESSARY.

Mrs. Knight argues that the court must enter the least restrictive order necessary to protect her. Appellant's Opening Brief at 25. However, RCW 74.34.005(6) provides that, "[t]he **department** must provide protective services in the least restrictive environment appropriate

and available to the vulnerable adult.” (Emphasis added). This provision of the statute applies to services offered to vulnerable adults by the Department of Social and Health Services, not to the court’s entry of a protection order on behalf of a vulnerable adult.

However, Eric, in petitioning the court for a protection order and requesting relief on behalf of his mother, did consider what the least restrictive relief would be. This is evidenced by the fact that he was not requesting a permanent no contact order and that he was not seeking to prevent his mother from providing Tor with any money at all. The court is not required to find a “maternal substitute” for Tor, as argued by Mrs. Knight. Appellant’s Opening Brief at 25. Further, Mrs. Knight can move to modify the terms of the protection order should circumstances change. RCW 74.34.163.

V. FEE REQUEST

RCW 74.34.130 provides that, “The court may order relief as it deems necessary for the protection of the vulnerable adult, including but not limited to....” The statute goes on to explicitly list seven types of relief the court can grant. The statute provides that in a vulnerable adult protection order proceeding, the respondent can be ordered to pay attorney’s fees, court costs, including service costs, and petitioner’s costs incurred in bringing the action. This extends to fees and costs on appeal,

as well. RAP 18.1; *Endicott v. Saul*, 142 Wn. App. 899, 929, 176 P.3d 560 (2008).

RCW 4.84.150 provides as follows:

In an action prosecuted or defended by an executor, administrator, trustee of an express trust, **or a person expressly authorized by statute**, costs shall be recovered as in an action by or against a person prosecuting in his own right, but such costs shall be chargeable only upon or collected of the estate of the party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such an action or defense.

(Emphasis added).

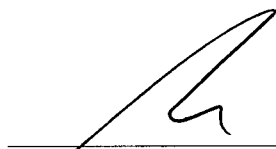
In the instant matter, the trial court found that Mrs. Knight was being exploited and abused by Tor and entered a protection order on Mrs. Knight's behalf. The petition was brought in good faith and the Court has the authority to order fees and costs against Tor in this appeal, or to award fees to Eric from Mrs. Knight's estate for prosecuting the action on her behalf.

Because Tor does not have sufficient assets or income to bear the costs of the appeal, Eric respectfully requests that the court order payment of his attorney's fees and costs from Mrs. Knight's estate.

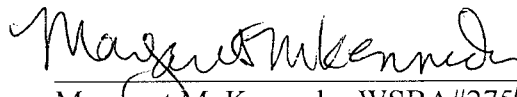
VI. CONCLUSION

Sufficient evidence in the record supports the trial court's findings and conclusions that Mrs. Knight is a vulnerable adult who is in need of protection from her son, Tor. Mrs. Knight has been diagnosed with dementia, and as a result of her cognitive impairments she is particularly susceptible to undue influence and financial exploitation. Eric, her son and attorney-in-fact, took appropriate actions on his mother's behalf to ensure that she does not continue to be abused, neglected, and/or financially exploited. There is no legal basis for extending the clear, cogent, and convincing standard to the issues raised in this appeal. Eric respectfully requests that the Court affirm the trial court's rulings.

Respectfully submitted this 28th day of March, 2013.



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DECLARATION OF SERVICE

I certify that on the 28th day of March, 2013, I served ~~a copy of the~~ **Respondent's Amended Opening Brief** upon the following parties to this proceeding and their attorneys or authorized representatives, as listed below, via regular mail and e-mail:

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I declare under penalty of perjury according to the laws of the State of Washington that the foregoing is true and correct.

DATED this 28th day of March, 2013.


Jeanette L. McAllister